

No. 19515

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

IRENE LUCERO,

Appellant,

vs.

THOMAS W. DONOVAN, *et al.*,

Appellees.

PETITION FOR REHEARING.

ROGER ARNEBERGH,

City Attorney,

BOURKE JONES,

Assistant City Attorney,

WILLIAM B. BURGE,

Deputy City Attorney,

Room 1814, City Hall,

Los Angeles, Calif. 90012,

Attorneys for Appellees.

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Appellees Conrad, Wells, Buczek and Cobb hereby respectfully request this Honorable Court to grant a rehearing in the above entitled action for the following reasons and upon the following grounds:

1. The court is requested to change its opinion insofar as it holds that appellee Conrad did not have probable cause for the arrest of appellant Lucero. At pages 8 and 9 of the opinion the court referring to the arrest stated "without more, this can hardly furnish adequate probable cause for arrest without warrant." The following is additional evidence not mentioned in the opinion bearing on the arrest which amounts to probable cause to wit:

(a) Conrad asked appellant Lucero if the pills and capsules found by Conrad in appellant's home were her's to which she replied "yes." [R. T. 230].

(b) Conrad asked appellant where she had gotten the pills and capsules to which she replied "from a friend, but I am not going to tell you because they might be narcotics." [R. T. 230-231].

(c) Conrad testified that he had studied and was familiar with a board in the Los Angeles City Department (a picture of which was received in evidence, Exhibit L) which had on it pills and capsules the possession of which without a prescription were unlawful. Conrad further testified that he had received training in the detection of dangerous drugs and narcotics [R. T. 227-228].

(d) The capsules found in the bottle in appellant's house were identified on the picture of said board [R. T. 513].

(e) Conrad, based upon his experience felt it was of some significance that the bottle was unlabeled and contained two different pills and capsules [R. T. 235].

(f) Conrad observed marks on Lucero's arms which in his opinion based upon his experience appeared to be hypodermic needle marks made by the illegal use of narcotics [R. T. 238].

(g) Conrad was corroborated by a narcotic expert of the Los Angeles Police Department who also believed that the capsules found in the bottle were the same as the capsules on the board, the possession of which without a prescription was a violation of the law [R. T. 510-513].

2. Determine whether the admissibility of appellant's arrests prior to the subject arrest was proper. This issue was briefed by both appellant and appellees. Failure to decide this issue could result in another appeal on this point.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,

BOURKE JONES,
Assistant City Attorney,

WILLIAM B. BURGE,
Deputy City Attorney,
Attorneys for Appellees.

Certificate.

I, William B. Burge, one of the attorneys for the appellees certify that in my judgment the Petition for Rehearing is well founded and it is not interposed for delay.

WILLIAM B. BURGE